

1 Department of Labor and Industry  
2 Board of Personnel Appeals  
3 PO Box 201503  
4 Helena, MT 59620-1503  
5 (406) 444-2718  
6  
7

8 STATE OF MONTANA  
9 BEFORE THE BOARD OF PERSONNEL APPEALS

10 IN THE MATTER OF THE UNFAIR LABOR PRACTICE CHARGE NO. 14-2010

13 LISA M. ANDREWS,	)	
	)	
15 Complainant,	)	INVESTIGATIVE REPORT
16 -vs-	)	AND
	)	NOTICE OF INTENT TO DISMISS
18 BUTTE TEACHERS UNION LOCAL 332,	)	
19 MEA-MFT,	)	
	)	
21 Defendant.	)	
	)	

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26 I. Introduction

27  
28 On December 7, 2009, Lisa Andrews filed an unfair labor practice charge with the Board  
29 of Personnel Appeals alleging violations of 39-31-402 and 39-31-403 MCA. The  
30 narrative of her complaint also alleges a violation of 39-31-101 MCA. Ms. Andrews  
31 contends that the Butte Teachers Union, hereinafter BTU, has failed to properly  
32 represent her in her dealings with the Butte School District, hereinafter District. The  
33 original complaint alleged that Ms. Andrews was the subject of retaliation by the District  
34 as a result of complaints she had filed with various agencies, including the Office of  
35 Public Instruction. The first summons was mailed to the BTU on December 8, 2009. On  
36 December 9, 2009, an amended summons was issued as a result of new and additional  
37 allegations by Ms. Andrews that her immediate supervisor, Kathy Cannon, had issued  
38 Ms. Andrews a formal, written reprimand, all part of the overall allegation of retaliation  
39 on the part of the Butte School District, and all part of Ms. Andrews allegation that BTU  
40 did not properly represent her. The BTU answered the charge and initial amended  
41 charge in a timely manner (with granted, agreed upon extensions) and has denied that it  
42 failed to fairly represent Ms. Andrews in her various complaints against the District.  
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45  
46 On September 14, 2010, Ms. Andrews filed another amendment to her complaint. This  
47 amendment alleged that BTU had failed to properly represent her in her grievances with  
48 the District, including the most recent action taken by the District, the termination of Ms.  
49 Andrews. The BTU again denied that it failed to fairly represent Ms. Andrews in her  
50 ongoing grievances with the District.

1 John Andrew was assigned to investigate the complaint, has reviewed the submissions  
2 of the parties and has communicated with the parties in the course of investigating the  
3 charge. It is specifically noted by the investigator that this case has been in his hands  
4 for a lengthy period of time. A great deal of that time in process is attributable to the  
5 ongoing assertions of Ms. Andrews and the continuing attempts of the BTU, the District,  
6 and Ms. Andrews to reach some sort of amicable settlement. Truly this is a case where  
7 it was, and is, hoped that the policy enunciated in 39-31-101 MCA “. . . to encourage the  
8 practice and procedure of collective bargaining to arrive at friendly adjustments of  
9 disputes between public employers and their employees” is ultimately achieved. As will  
10 follow, that has not happened to date. However, the underlying issues are still alive and  
11 the time is now right to address the merits of the duty of fair representation complaint  
12 brought by Ms. Andrews.  
13

## 14 15 16 **II. FINDINGS AND DISCUSSION** 17

18 Lisa Andrews began her employment with the Butte School District in 2002. At the time  
19 of her termination, and for all periods relevant to this matter, Ms. Andrews was  
20 employed as a secretary at the Webster Alternative High School. For all periods  
21 relative to this matter Kathy Cannon supervised and evaluated Ms. Andrews.  
22

23  
24 In her chronology of events filed with the Board Ms. Andrews lists a series of complaints  
25 she filed with state and federal agencies between 2007 and 2009. Quoted sections are  
26 the words of Ms. Andrews and are typical of her, at times, inflammatory rhetoric. The  
27 complaints range from alleged “unethical sexual conduct” on the part of District  
28 administrators; “unfair and unethical retaliatory sabotage, harassment and  
29 discrimination” commenced by District management; two complaints denied by the  
30 Human Rights Commission; a complaint filed with the Office of Public Instruction for  
31 “school fraud and breach of confidentiality” the result of which Ms. Andrews states was  
32 a finding by OPI that the District was “in violation of state school fraud”; a complaint filed  
33 with the U.S. Department of Education for “misappropriation of federal Title I school  
34 funds with respect to the lack of federally-funded school textbooks and the Webster  
35 Alternative School Principal and Special Education Services Director (Kathy Cannon)  
36 requiring Webster Teachers to copy old textbooks, which constitutes illegal copyright  
37 infringement”; and, a complaint with OSHA for “an unsafe, unsanitary and unhealthy  
38 school lunch room, due to leaking roof”. All of these complaints, according to Ms.  
39 Andrews, were known to the District and form the basis for retaliation by the District  
40 against Ms. Andrews with the brunt of the retaliation coming from Ms. Cannon in Ms.  
41 Andrews’ view. It is this view that also has resulted in Ms. Andrews’ insistence that any  
42 settlement with the District include a new supervisor/evaluator other than Ms. Cannon.  
43 From all of this also stems Ms. Andrews’ belief that the BTU has not properly  
44 represented her in the course of processing her grievances.  
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47  
48 Two core actions were at the heart of the initial complaint and first amended complaint  
49 of Ms. Andrews. The first is a disciplinary letter of August 25, 2009, from Terese  
50 McClafferty, Director of Human Resources for the District, to Ms. Andrews documenting

1 specific job expectations and providing that Ms. Andrews was on probation for the 2009-  
2 2010 school year and that "any failure to perform the following core function of your job  
3 will result in your immediate termination:" The expectations are then listed and the letter  
4 concludes, "Failure by you to fully satisfy any of the above core requirements will result  
5 in your immediate dismissal for cause". The BTU did grieve this disciplinary letter. The  
6 Superintendent responded on October 5, 2009, denying the BTU request. On October  
7 8, 2009, the BTU requested a list of arbitrators to hear the grievance. Further  
8 discussion ensued between the BTU and the District culminating with the BTU agreeing  
9 that a less objectionable letter be sent to Ms. Andrews. Ms. Andrews refused to sign  
10 this letter and on November 13, 2009, the BTU notified the District of its intention to  
11 proceed to arbitration. It is this portion of the complaint that the BTU has tried to resolve  
12 and continues to try to resolve to this day.  
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15 At roughly the same time the disciplinary grievance was being handled the BTU was  
16 made aware by Ms. Andrews that, in her view, she was being retaliated against for all of  
17 the complaints she had filed against the District. BTU filed a retaliation grievance under  
18 the contract on December 16, 2009. As part of the requested relief BTU asked that Ms.  
19 Andrews be assigned a new supervisor. Ms. Andrews contends all along that the  
20 disciplinary grievance letter sent by Ms. McClafferty was a subterfuge and the real  
21 reason for the discipline did not relate to performance, but rather to all the complaints  
22 Ms. Andrews filed against the District. Be that as it may, in November of 2009, the BTU  
23 actively was involved in defending against the District's disciplinary action. Mark Berg  
24 the Union Business Agent was in regular communication with Ms. Andrews.  
25 Additionally Mr. Berg had been working with JC Weingartner, MEA-MFT Member Rights  
26 Director. Mr. Weingartner also happens to be an attorney and he is experienced in  
27 grievance handling. Ms. Andrews had also complained about how her employment  
28 situation was being handled throughout the MEA-MFT chain of command. Further, Ms.  
29 Andrews had also consulted with an outside attorney about her situation with the District  
30 and possible whistleblower protections. In short, the BTU, as well as MEA-MFT, was  
31 integrally involved in all of this but the union was somewhat in the dilemma of possible  
32 independent whistleblower protections that might be taken by Ms. Andrews coupled with  
33 whatever retaliation provisions might be in the existing collective bargaining agreement.  
34 The BTU did not fail to process the grievance, but BTU did decide that it was not in the  
35 best interest of the Union to process the retaliation grievance to arbitration immediately  
36 as demanded by Ms. Andrews. From what has been reviewed by the investigator the  
37 BTU simply needed more time to work with Ms. Andrews and the District on a global  
38 resolution to all the issues raised by Ms. Andrews. In this regard it is noted by the  
39 investigator that between the time the original complaint was filed and until the BTU  
40 formal answer to the complaint on January 8, 2010, Ms. Andrews regularly deluged the  
41 BTU and the investigator with additional allegations and information. She has continued  
42 to do so for much of the pendency of this complaint. There was no lack of  
43 communication between all involved, but assimilating all of it and trying to put it into  
44 some sort of agreement with the District could not happen overnight. Nonetheless,  
45 what has been provided to the investigator by Ms. Andrews and the BTU clearly  
46 documents that the Union was working to resolve her grievances and complaints to the  
47 best of its ability.  
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1 The efforts of the BTU are further reflected in other events. Throughout January,  
2 February, March, April and into May there were meetings involving amongst others the  
3 BTU, Mr. Weingartner, and Pat Fleming, District counsel. It simply is not the case that  
4 nothing was happening. In fact, by May of 2010 District counsel Fleming was drafting a  
5 tentative agreement to resolve the grievances and the BTU was preparing to present it  
6 to Ms. Andrews for her comment when it was ready. The BTU anticipated that, when  
7 ready, the tentative resolution would be presented before the grievance committee and  
8 Ms. Andrews would be invited to listen to the proposal and offer her suggestions at that  
9 time. Throughout this period of time Ms. Andrews continued to work for the District and  
10 she continued to communicate her concerns to the BTU, MEA-MFT, and the  
11 investigator.  
12

13  
14 One event is worthy of mention at this point, Ms. Cannon's annual review of Ms.  
15 Andrews was set for April 20, 2010. This became an issue with Ms. Andrews leading to  
16 numerous e-mail and fax exchanges. One particular e-mail of April 19, 2010, from Ms.  
17 Andrews concerning the annual review, and copied to numerous individuals reads:  
18

19 Per my medical professional's directive, I will not be attending tomorrow  
20 morning's (08/20/2010 [sic]) meeting for annual review. Her medical  
21 documentation will be provided accordingly.  
22 Thank You,  
23 Lisa Andrews, Secretary  
24  
25

26 The significance of this is that by this point in time Ms. Andrews believed all the stress  
27 associated with the grievances and District actions were causing her medical problems.  
28

29 Paraphrasing Walt Kelly and the lasting words of Pogo: "we have met the enemy and  
30 she is me". On point with the admonition of Pogo were some of the most telling, and  
31 perhaps best counsel given to Ms. Andrews, counsel that was totally disregarded. The  
32 advice came from Mark Berg. It came in a series of e-mails from Ms. Andrews to Mr.  
33 Berg, many of which were copied to other BTU and MEA-MFT officials. In summary the  
34 exchange concerned demands of Ms. Andrews that something happen immediately and  
35 specifically that she be granted a different supervisor other than Ms. Cannon. The  
36 November 18, 2009, e-mail from Mr. Berg concerning the supervisor provides:  
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38

39 I am not an administrator.  
40 We need to wait on the administration building.  
41 You need to do your job and stay out of trouble. Then all the letter will go away.  
42 Mr. Nokes [Ms. Andrews' preferred evaluator] is not an administrator. There is  
43 no way they will let Nokes evaluate your duties.  
44 Kathy Cannon is your boss and you need to do what she tells you.  
45 If she tells you to do something you are not sure about, ask for clarification.  
46 Even if you think it may be trivial or beneath your status.  
47 Mark  
48  
49  
50

1 Ms. Andrews disregarded the sage advice of Mr. Berg throughout this ordeal and  
2 sometime in May of 2010 made a posting to a Montana Standard website stating  
3 "obviously, the Title I funds were misappropriated..." This posting was brought to the  
4 attention of Superintendent Linda Reksten. In a May 11, 2010, letter to Ms. Andrews  
5 Superintendent Reksten explained the meaning of the word misappropriate and  
6 requested proof of the alleged theft or embezzlement. Ms. Reksten demanded a written  
7 response from Ms. Andrews and received the same on May 17, 2010. Even as the  
8 investigator admonished Ms. Andrews, words do have meaning, and her rather cavalier  
9 use of such terms as misappropriated has consequences. Of particular note in this  
10 vein, the investigator obtained a copy of the final report from OPI concerning its  
11 investigation of Ms. Andrews' complaint. To be certain, the District did err in the way it  
12 disposed of certain files. It also did not provide adequate training to volunteers and  
13 students working with confidential information, but to say that the District engaged in  
14 "school fraud and breach of confidentiality" is patently wrong in the first regard and a  
15 significant stretch in the second. Further, Ms. Andrews statement that OPI made a  
16 finding that the District was "in violation of state school fraud" is not only inflammatory, it  
17 too is wrong. The point in all this being that Ms. Andrews should not be surprised with  
18 what she perceives as a hostile work environment. Who wouldn't feel affronted by some  
19 of what Ms. Andrews has stated? However, even with this, the BTU continued to work  
20 with the District on a settlement for Ms. Andrews.  
21  
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24 On June 2, 2010, Mark Berg sent Ms. Andrews a copy of a tentative agreement reached  
25 between the BTU and the District. The letter invited Ms. Andrews to attend a meeting of  
26 the grievance committee where she could "give comment and guidance to the  
27 committee" before it voted on ratification of the proposal. Frankly, in the opinion of the  
28 investigator and given all that had transpired to this point, the proposal was a  
29 reasonable one. The committee did meet with Ms. Andrews in attendance with the end  
30 result being that the BTU and the District signed off on the settlement agreement on  
31 June 8, 2010. In subsequent conversations between the investigator and Ms. Andrews  
32 Ms. Andrews agreed that progress was made and that the investigator would continue  
33 to monitor the case with the hope being that at some point Ms. Andrews would withdraw  
34 her unfair labor practice complaint.  
35

36  
37 As a special note, also on June 2, 2010, Ms. Cannon had completed the review of Ms.  
38 Andrews' performance. Ms. Andrews notified the union she was grieving this as well,  
39 but in a conversation the investigator had with Ms. Andrews it was assumed that  
40 attempting to resolve this complaint was integral to the new willingness to work with the  
41 BTU in a more collaborative manner to resolve all the workplace issues between the  
42 District and Ms. Andrews.  
43

44 On August 4, 2010, the Montana Standard reported that the Office of Public Instruction  
45 had cleared the Butte School District of misusing any funds. There was no  
46 misappropriation and there were ample textbooks for students at the alternative school.  
47

48 On August 30, 2010, the investigator wrote to Ms. Andrews asking whether or not she  
49 would be withdrawing her complaint against the BTU in light of what appeared to be an  
50

1 improving situation.  
2

3 On September 3, 2010, The investigator was advised by one of his co-workers that Ms.  
4 Andrews had called. The investigator was unable to reach Ms. Andrews by phone.  
5

6 On September 13, 2010, Ms. Andrews faxed 9 pages to the Board of Personnel  
7 Appeals. Included were duplicate copies of a fax cover sheet addressed to Mark Berg  
8 and the comment "Please fax response with the BTU grievance process for wrongful  
9 termination and re-instatement". The fax also included what appears to be some sort of  
10 doctor statement from Travelers Healthcare Clinic and a copy of the August 30, 2010,  
11 letter of the investigator to Ms. Andrews. Of most significance is a copy of an August  
12 30, 2010, letter from Superintendent Reksten to Ms. Andrews notifying Ms. Andrews:  
13  
14

15 Given your extended, unauthorized absence, your documented and continued  
16 failure to perform the basic tasks Kathy Cannon has assigned to you, and given  
17 your inappropriate filing of two (2) false and completely unsupported allegations  
18 against your supervisor and co-workers with the Office of Public Instruction  
19 (OPI), I have determined that it is in School District No. 1's best interest to  
20 terminate your employment with the District effective immediately.  
21  
22

23 Also included with the September 13, 2010 fax to the Board was a request from Ms.  
24 Andrews to:  
25

26 PLEASE FILE THE PENDING STATE OF MONTANA BOARD OF PERSONNEL  
27 APPEALS UNFAIR LABOR PRACTICE (ULP) CHARGE NO. 14-2-1- (957-  
28 2010), DUE TO THE TOTAL LACK OF FULL, FAIR, AND COMPLETE BTU &  
29 MEA-MFT UNION COMMUNICATION, REPRESENTATION, AND  
30 PROTECTION OF MY BUTTE SCHOOL DISTRICT NO. 1 EMPLOYMENT  
31 RIGHTS.  
32

33 PLEASE REFERENCE THE ATTACHED BTU AND DISTRICT DATED FAX  
34 DOCUMENTATION, (DATED 09/07/2010) WITHOUT BTU RESPONSE. I ALSO  
35 TOTALLY DISAGREE WITH THE DISTRICT AND BTU-NEGOTIATED  
36 SETTLEMENT AGREEMENT, AS IT DID NOT PROVIDE COMPLETE  
37 EMPLOYEE PROTECTION AGAINST THE DISTRICT WRONGFUL  
38 TERMINATION.  
39  
40  
41

42 On September 14, 2010, the investigator received a fax from Ms. Andrews advising of a  
43 change of address on her part. Another amended summons was served on the BTU on  
44 September 14, 2010.  
45

46 The BTU responded to Ms. Andrews amended complaint by furnishing the investigator  
47 a copy of the grievance filed on behalf of Ms. Andrews by the BTU. In addition to  
48 assertions that the termination was without cause, lacking in due process, and did not  
49  
50

1 include progressive discipline, the grievance also asserts the discharge was retaliatory  
2 in nature since it referenced the OPI complaints filed by Ms. Andrews.  
3

4 From this point forward the investigator advised Ms. Andrews that all indications were  
5 that the BTU was moving forward to arbitration. In fact, one arbitrator had been  
6 mutually selected by the BTU and the District, but that arbitrator failed to communicate  
7 with the parties. Although it was troubling that this process was taking as long as it did,  
8 nonetheless, a second arbitrator was selected by the BTU and the District and that  
9 arbitrator has scheduled an arbitration hearing to address the termination of Ms.  
10 Andrews.  
11

12  
13 The above captures the high points of the information provided to the investigator. It  
14 does not go into all the allegations or representations of Ms. Andrews, but it is hopefully  
15 a summary of the most significant allegations and events of her complaint.  
16

17 Since the Montana Supreme Court has approved the practice of the Board of Personnel  
18 Appeals in using Federal Court and National Labor Relations Board (NLRB) precedent  
19 as guidelines in interpreting the Montana Collective Bargaining for Public Employees  
20 Act, State ex rel. Board of Personnel Appeals vs. District Court, 183 Montana 223 598  
21 P.2d 1117, 103 LRRM 2297; Teamsters Local No. 45 vs. State ex rel. Board of  
22 Personnel Appeals, 185 Montana 272, 635 P.2d 185, 119 LRRM 2682; and AFSCME  
23 Local No. 2390 vs. City of Billings, Montana 555 P.2d 507, 93 LRRM 2753 it is helpful to  
24 quote extensively from federal precedent.  
25  
26

27 This case, very simply is about whether or not the BTU breached its obligation to fairly  
28 represent Ms. Andrews in her disputes with the Butte School District. It is not the role of  
29 the investigator to determine whether or not there is merit to the grievance of Lisa  
30 Andrews. Rather, as set down by the U.S. Supreme Court in Vaca v Sipes 386 U.S.  
31 171, 64 LRRM 2369 (1967) and as subsequently followed by the Board of Personnel  
32 Appeals in Ford v University of Montana, 183 Mont. 112, 598 P.2d 604 (1979) the role  
33 of the Board in an alleged breach of the duty of fair representation is to determine  
34 whether the actions of a union, or lack of action, in some way are a product of bad faith,  
35 discrimination or arbitrariness.  
36  
37

38 The duty of fair representation does not require that all grievances be taken to  
39 arbitration. "Though we accept the proposition that a union may not arbitrarily ignore a  
40 meritorious grievance or process it in a perfunctory fashion we do not agree that the  
41 individual employee has an absolute right to have his grievance taken to arbitration  
42 regardless of the provisions of the applicable collective bargaining contract." *Id.* The  
43 duty does not limit the legitimate right of the union to exercise broad discretion in  
44 performing its duties because "union discretion is essential to the proper functioning of  
45 the collective bargaining system." International Brotherhood of Electrical Workers v.  
46 Foust, 442 U.S. 42 (1979)  
47

48 As it relates to grievance processing, the courts have held that to meet its obligations, a  
49 "union must conduct some minimal investigation of grievances brought to its attention."  
50 Peters v. Burlington N. R. R. Co., 931 F.2d 534, 539 (9<sup>th</sup> Cir. 1990) (quoting Tenorio v.

1 NLRB, 680 F.2d 598, 601 (9<sup>th</sup> Cir. 1982) A union breaches its duty of fair representation  
2 by handling a grievance “arbitrarily and perfunctorily.” Tenorio, 680 F.2d at 602. A  
3 union’s actions are arbitrary only if, in light of the factual and legal landscape at the time  
4 of the union’s actions, the union’s behavior is so far outside a wide range of  
5 reasonableness as to be irrational. Air Line Pilots v. O’Neill, 499 U.S. 65 (1991). A  
6 union processes a grievance in a perfunctory manner by treating the “union member’s  
7 claim so lightly as to suggest an egregious disregard of her rights.” Wellman v. Writers  
8 Guild of Am., West, Inc. 146 F.3d, 666, 671 (9<sup>th</sup> Cir. 1998).

9  
10 When an employee claims that a union breached its duty of fair representation by failing  
11 to grieve complaints, courts typically look to determine whether the union’s conduct was  
12 arbitrary. Clarke v. Commc'ns Workers of America, 318 F.Supp.2d 48, 56 (E.D.N.Y.  
13 2004). A union acts arbitrarily when it “ignores or perfunctorily presses a meritorious  
14 claim,” Samuels v. Air Transport Local 504, 992 F2d 12, 16, 143 LRRM 2177] (2d Cir.  
15 1993), but not where it “fails to process a meritless grievance, engages in mere  
16 negligent conduct, or fails to process a grievance due to error in evaluating the merits of  
17 the grievance,” Cruz v. Local Union No. 3 of the Int’l Bhd. of Elec. Workers, 34 F.3d  
18 1149, 1154-55, 147 LRRM 2176, (2d Cir. 1994). As part of determining whether a  
19 grievance lacks merit the union must “conduct at least a ‘minimal investigation’ ... [b]ut  
20 only an ‘egregious disregard for union members’ rights constitutes a breach of the  
21 union’s duty’ to investigate.” Emmanuel v. Int’l Bhd. of Teamsters, Local Union No. 25,  
22 426 F.3d 416, 420, 178 LRRM 2261 (1st Cir. 2005) (quoting Garcia v. Zenith Elec.  
23 Corp., 58 F.3d 1171, 1176 , 149 LRRM 2740 (7th Cir. 1995); Castelli v. Douglas Aircraft  
24 Co., 752 F.2d 1480, 1483 118 LRRM 2717] (9<sup>th</sup> Cir. 1985)).

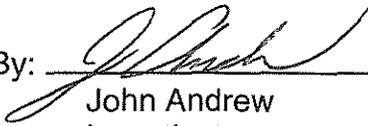
25  
26  
27 Here the BTU has not refused to process the grievances of Lisa Andrews so there is not  
28 even a question of arbitrariness, discrimination or for that matter, bad faith. The BTU  
29 has done all it could do to settle Ms. Andrews’ disputes with the District and the BTU  
30 continues to process her grievance with an arbitration now set to determine whether or  
31 not her termination was proper or not and the reasons for the same. Again, although it  
32 is troubling that this case has taken so long to evolve, if the BTU prevails Ms. Andrews  
33 will receive a remedy to the extent determined appropriate by the arbitrator. The BTU  
34 has done its job and continues to do its job. Even though what has transpired to date  
35 may not have been done in the precise way Ms. Andrews might want, that is not the  
36 basis for a finding of a violation of the duty of fair representation by the BTU. The BTU  
37 has acted neither irrationally, arbitrarily or unreasonably. It has not discriminated against  
38 Ms. Andrews when it has exercised its best judgment on how to proceed, and at this  
39 time there is no reason for the specter of a failure to properly represent a bargaining unit  
40 member to hang any longer over the head of the BTU. The BTU has not breached its  
41 duty of fair representation in any manner and there is no merit to the complaint of Lisa  
42 Andrews found in this investigation.  
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1 **III. Recommended Order**

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3 It is recommended that unfair labor practice charge 14-2010 be dismissed as without  
4 probable merit.  
5

6 DATED this 8<sup>th</sup> day of June 2011.  
7

8  
9 BOARD OF PERSONNEL APPEALS

10  
11 By:   
12 \_\_\_\_\_  
13 John Andrew  
14 Investigator  
15

16 NOTICE

17  
18 Pursuant to 39-31-405 (2) MCA, if a finding of no probable merit is made by an agent of  
19 the Board a Notice of Intent to Dismiss is to be issued. The Notice of Intent to Dismiss  
20 may be appealed to the Board. The appeal must be in writing and must be made within  
21 10 days of the mailing of this Notice, no later than June 21, 2011. The appeal  
22 is to be filed with the Board at P.O. Box 201503, Helena, MT 59620-1503. If an appeal  
23 is not filed the decision to dismiss becomes a final order of the Board.  
24  
25

26 CERTIFICATE OF MAILING

27  
28 I, Windy Knutson, do hereby certify that a true and  
29 correct copy of this document was mailed to the following on the 8<sup>th</sup> day of June  
30 2011 postage paid and addressed as follows:  
31  
32

33 LISA ANDREWS  
34 PO BOX 4105  
35 BUTTE MT 59702 4105  
36

37  
38 JC WEINGARTNER  
39 MEA MFT  
40 1232 EAST 6<sup>TH</sup>  
41 HELENA MT 50601  
42

43 MARK BERG  
44 BUTTE TEACHERS UNION  
45 156 WEST GRANITE  
46 BUTTE MT 59701  
47  
48  
49  
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untimely. Andrews contends that in the interim, she was left to work in a hostile work environment. An environment that she was ultimately forced to leave.

In response, BTU argued that it has met its duty of fair representation. When the District placed Andrews on probationary status, it worked diligently to reach a resolution between all of the parties, including Andrews. And further, BTU contends that it has adequately grieved Andrews' termination. In fact, the proceedings regarding this grievance are set to go to arbitration in the near future.

**ANALYSIS**

After reviewing the record and considering the arguments of the parties, the Board deliberated and affirmed the decision to dismiss the ULP. The Board finds that the investigator did not err in his conclusion that there was not substantial evidence to support a determination of probable merit and the investigator's determination was not based upon error of law. *Admin. R. Mont. 24.26.680B*. BTU did not breach its duty of fair representation with Andrews.

Accordingly, the Board hereby incorporates the findings of the investigative report and dismisses Charge No.14-2010, for no merit for the reasons asserted above, pursuant to Section 39-31-405(2), MCA.

DATED this 22 day of August 2011.

BOARD OF PERSONNEL APPEALS

By:   
Richard L. Parish, Presiding Officer

Board members Nyman, Johnson, Reardon and Stanton concur.

\*\*\*\*\*

NOTICE: You are entitled to Judicial Review of this Order. Judicial Review may be obtained by filing a petition for Judicial Review with the District Court no later than thirty (30) days from the service of this Order. Judicial Review is pursuant to the provisions of Section 2-4-701, et seq., MCA.

\*\*\*\*\*

**CERTIFICATE OF MAILING**

I, Wendy Krutson, do hereby certify that a true and correct copy of this document was mailed to the following on the 23<sup>rd</sup> day of August, 2011:

LISA ANDREWS  
PO BOX 4105  
BUTTE MT 59702

J.C. WEINGARTNER  
BUTTE TEACHERS UNION, MEA-MFT  
1232 E 6<sup>TH</sup> AVE  
HELENA MT 59601